



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,643	09/22/2000	Andrew David Birrell	18973-50 (P00-3011)	2074

7590 04/19/2007
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
----------	--------------

2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/668,643	BIRRELL ET AL.	
	Examiner	Art Unit	
	Alina N. Boutah	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 15-28, 30 and 44-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 15-28, 30 and 44-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/24/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This action is in response to Applicant's amendment filed January 24, 2007. Claims 1-4, 15-28, 30 and 44-58 are pending in the present application.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on January 24, 2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 15-28, 30 and 44-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman (US 4,631,664) in view of Crawford (US 5,771,354)

As broadly drafted and as the best the Examiner can ascertain from the language of the claims: Bachman discloses a system/method in partnership database management: forming one or more partnerships to store data received from one or more of its partners, whereby a first

Art Unit: 2143

computer in each partnership assumes the task of storing data received from one or more other computers in the partnership and one or more of the other computers in the partnership assume the task of storing data received from the first computer accordance with each agreement; and (col.3, line 21-col.4, line 58)

periodically verifying that data is being retained by the computers committed to act as partners in accordance with each agreement. (col.5, line 13-col.6, line 65)

selecting potential partners from among the plurality computers based on predetermined criteria. (col.5, line 13-col.6, line 65)

negotiating the agreements between the plurality of computers based on predetermined requirements, including requirements (col.5, line 13-col.8, line 40)

Bachman fails to mention a partnership in backing up data.

Crawford teaches an Internet online backup system interactively establishes backup services which allows one (or more) partnership ("Diagnostics and Maintenance Services (block 204) include various programs stored on virtual disks to checkout, troubleshoot, and enhance the customer computer 50. Diagnostic programs can detect problems with memory or system board components. Peripheral management programs can be used for testing, alignment, storage maintenance, etc., to improve device throughput. Hardware errors detected by diagnostic programs during a customer automated session can trigger repair service based on a maintenance agreement. ") among plurality of computers (100, 120). In one preferred embodiment, replica computer 160 is capable of operating in an on-line mode or in an off-line mode. In the on-line

Art Unit: 2143

mode, the replica computer 160 communicates interactively with customer computer 50 to perform processing tasks. In this on-line mode in the preferred embodiment, the customer computer 50 and the on-line replica computer 160 cooperate to support processing in either and/or both processors (shared access to data buffers and a record locking scheme is used to ensure safe access). In the off-line mode, replica computer 160 performs personal computer tasks in response to direction from host computer 104 without having an on-line, interactive link with customer computer 50.

The business practice of backing up data is notoriously well known in information management. To back up data for the purpose of a secure record management and to improve load balancing, reduction or elimination of fragmentation, and to prevent loss of data from an occurrence of a multiple storage failure.

It would have been obvious to make use of the partnership database management of Bachman to allow data management to store, retrieve, and modifies data records in computers over the network to include data backup as one of its services offered to customer(s)/client(s)/partner(s) in view of the express suggestion in Crawford.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In response to applicant's argument that Bachman and Crawford fail to teach: each computer in a partnership commits under an agreement to store backup data received from one or more of its backup partners, and that a first computer in each partnership assumes the task of storing backup data received from one or more other computers in the partnership and one or

Art Unit: 2143

more of the other computers in the partnership assume the task of storing backup data received from the first computer, the PTO respectfully submits that this is taught by Bachman in col. 3, line 21-col. 4 line 58 as cited above as well as various cited areas in Crawford. Therefore the Bachman and Crawford combination teaches the claimed invention.

In response to Applicant's argument that neither Bachman nor Crawford teach exchanging message among computers of the plurality to determine the ability of each to satisfy backup storage requirements of one or more others, the PTO respectfully disagrees and submits that this is taught by Crawford. Figure 9:480, for example, illustrates a server sending available drive information to customer drives. This information is interpreted as the exchanging message as claimed.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 2143

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

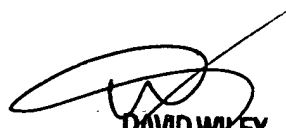
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ANB

ANB


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100